

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

BRANDON SHANE HARRIS,

Plaintiff,

v.

FNU KUSHNER, et al.,

Defendants.

Case No. CIV-22-230-J

ORDER

Plaintiff, a state prisoner appearing pro se, filed an Amended Complaint under 42 U.S.C. § 1983 alleging constitutional violations occurring at the Lawton Correctional Facility. (Amend. Comp.) [Doc. No. 10]. The matter was referred for initial proceedings to United States Magistrate Judge Shon T. Erwin consistent with 28 U.S.C. § 636(b)(1)(B), (C). On screening, Judge Erwin recommended that the Court dismiss, without prejudice, (1) all claims against Defendants Henderson, Slonker, Poirot, Borger, Greer, Bowers, Garcia, Funk, Davis, Kenelle, Holberry, Con, Sias, Rhoads, and Honaker, and (2) the First Amendment claim against Defendant Vallejo.¹ [Doc. No. 13]. Judge Erwin explained that Plaintiff's Eighth Amendment individual capacity claims against Defendants Kushner, Vallejo, Scholer, Rast, and Windham survived the screening. *See id.*

The Court adopted that recommendation, [Doc. No. 16], and Judge Erwin has now issued a second Report and Recommendation, noting that Plaintiff voluntarily dismissed Defendant Windham and recommending that the Court grant Defendants Vallejo and Rast's motion for

¹ When asked to identify the parties to the lawsuit, Plaintiff identified Defendants "Rhoads" and "Vallejo." In other filings, Plaintiff has identified the same parties as "Rhodes" or "Roads" and "Vallego" or "Vajilo." The Court has elected to use Plaintiff's spellings as presented in his initial identification of the parties. *See* Amend. Compl. at 5, 10.

summary judgment and sua sponte dismiss the claims against Defendants Kushner and Scholes. [Doc. No. 42]. Plaintiff did not object and has waived his right to appellate review of the factual and legal issues addressed in the Report and Recommendation. *See Casanova v. Ulibarri*, 595 F.3d 1120, 1123 (10th Cir. 2010).

Accordingly, the Court ADOPTS the Report and Recommendation [Doc. No. 42], GRANTS Defendants Vallejo and Rast's motion for summary judgment [Doc. No. 29], and sua sponte DISMISSESS, without prejudice, all claims against Defendants Kushner and Scholer. Additionally, based on Judge Erwin's findings, the Court believes Plaintiff's request to add a new defendant would be futile and the request is DENIED.

A separate judgment will issue.

IT IS SO ORDERED this 18th day of October, 2023.


BERNARD M. JONES
UNITED STATES DISTRICT JUDGE